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EXAMINER

VAN HANDEL, MICHAEL P

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/923,928	<b>Applicant(s)</b> SCHWALB, EDDIE M.	
	<b>Examiner</b> Michael Van Handel	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☒ Claim(s) 1, 22-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 1 is objected to because of the following informalities:

Line 6 of claim 1 reads “said single reference data structure.” The examiner notes that there is a lack of antecedent basis for the “single reference data structure,” since it is previously referred to only as “data structure.”

Appropriate correction is required.

2. Claims 22-28 are objected to because of the following informalities:

The preambles of claims 22-28 are inconsistent with the preamble of the claim they depend upon. Claims 22-28 refer to “the software appliance apparatus” of claim 21, while claim 21 refers to “a set top box.”

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6-9, 12-15, 18-21, 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhoades.

Referring to claims 1, 13, 14, 19, 20, 21, and 28, Rhoades discloses a software appliance apparatus/method (home computing assembly 10) for receiving broadcast content information having at least one software application (col. 5, l. 3-12)(Fig. 1) comprising:

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- a signal receiving input device 36 (Fig. 3);
- a central processing unit 30 (Fig. 3);
- an audio/video translation device, coupled to the signal receiving input device, to convert the audio/video signal for output 46, 47, 48 (Fig. 3);
- a memory module 32 (RAM) contained within said software appliance apparatus and electrically coupled to said central processing unit;
- a data structure contained and stored on said memory module, said single reference data structure capable of receiving and storing said broadcast content information, said broadcast content information processed by said central processing unit such that the software appliance apparatus receives the content information and processes the at least one software application therewith (col. 6, l. 22-25);
- an application program interface for providing a single unified access interface to the software application, wherein all of said content information is accessed through said application program interface (the examiner notes that the computing element 10 converts the application into digital data capable of being operated by the processor 37)(col. 5, l. 48-65)(col. 7, l. 1-8)(Fig. 2); and
- a monitoring and billing module 60, coupled to the memory module, to monitor the activity of the at least one software application and to bill a recipient based on the activity monitored (col. 3, l. 28-45)(Fig. 1).

Referring to claims **4**, **12**, **18**, and **24**, Rhoades discloses the software appliance apparatus/method according to claims 1, 9, 15, and 21, respectively, further comprising a disk

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reader, coupled to the central processing unit, to read content on a source disk and transmit it to the data structure as the broadcast content information (col. 6, l. 5-9)(Figs. 2).

Referring to claims **6** and **26**, Rhoades discloses the software appliance apparatus according to claims 1 and 21, respectively, further comprising a display 73, coupled to the application program interface, to display the at least one software application during use (col. 5, l. 19-24)(Fig. 1).

Referring to claims **7** and **27**, Rhoades discloses the software appliance apparatus according to claims 1 and 21, respectively, wherein the broadcast content information is generated within the software appliance locally (the examiner notes that a removable, non-volatile memory card may store a software program so that it can be used locally)(col. 6, l. 5-12)(Fig. 2).

Referring to claim **8**, Rhoades discloses the software appliance apparatus according to claim 7, further comprising a set top box 10 (home computing assembly), coupled to the data structure, to receive the broadcast content information for rendering on a display device (col. 7, l. 9-20)(Fig. 3).

Referring to claims **9** and **15**, Rhoades discloses a method/computer-readable code product for utilizing broadcast content information having at least one software application, comprising:

- receiving a broadcast content information data stream, comprising the at least one software application (see claim 1);
- processing the broadcast content information to access the at least one software application (see claim 1);

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- collecting component data from the broadcast content information data stream;
- storing the collected data in a data store;
- accessing a data channel identified in the collected data (the examiner notes that only requesting subscriber locations containing the requesting home computing element 10 can receive, store, decode and use the requested information software programs)(col. 5, l. 1-18); and
- rendering the at least one software application found within the accessed data channel for display and for utilization by a user (see claim 6).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **2, 10, 16, 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Brotz et al.

Referring to claims **2, 10, 16, and 22**, Rhoades discloses the software appliance apparatus/method according to claims 1, 9, 15, and 21, respectively. Rhoades does not disclose that the apparatus operates within a Digital TV Application Software Environment (DASE). Brotz et al. discloses digital television system in which the DASE signal format can be used (p. 3, paragraph 25). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include the ability to use the DASE signal format

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such as that taught by Brotz et al. in order to provide a system that can take advantage of the enhanced ability to access and display digital information within a television system for displaying and accessing HTML documents (p. 1, paragraph 7).

7. Claims **3, 11, 17, 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Connelly.

Referring to claims **3, 11, 17, and 23**, Rhoades discloses the software application apparatus/method of claims 1, 9, 15, and 21, respectively. Rhoades does not disclose that the data structure is Program and System Information Protocol ("PSIP") compatible. Connelly discloses receiving data in PSIP format (p. 2, paragraph 11). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include the ability to receive data in PSIP format such as that taught by Connelly in order to help a user locate broadcasted channels.

8. Claims **5, 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoades in view of Shen et al.

Referring to claims **5 and 25**, Rhoades discloses the software appliance apparatus according to claims 1 and 21, respectively. Rhoades does not disclose that the software appliance further comprises a personal digital assistant (PDA) device connection for connection to a PDA device enabling the PDA device to access the at least one software application. Shen et al. discloses a computer that downloads television program schedule information and transports the information to a PDA through a connection between the PDA 210 and the desktop computer 202 (the examiner notes that by opening a connection between the software programs 204, 212 the PDA is allowed to access software program 204)(col. 2, l. 44-48, 66-67)(col. 3, l. 1-

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2)(Fig. 2). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Rhoades to include a connection between computer and PDA software programs such as that taught by Shen et al. in order to simplify the use of program schedule information through a remote control (col. 1, l. 46-48).

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571.272.7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Van Handel  
Examiner  
Art Unit 2617

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